U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-P-

DATE: APR. 18, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a physician specializing in cardiology, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). In addition, the Petitioner seeks a national interest waiver of the job offer requirement that is normally attached to this classification. *See* § 203(b)(2)(B)(i) the Act, 8 U.S.C. § 1153(b)(2)(B)(i). This discretionary waiver allows U.S. Citizenship and Immigration Services (USCIS) to provide an exemption from the requirement of a job offer, and thus a labor certification, when it is in the national interest to do so.

The Director, Nebraska Service Center, denied the petition. The Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of a job offer would be in the national interest. The matter is now before us on appeal. On appeal, the Petitioner contends that he satisfies the national interest waiver requirements. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> > (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational

> interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> > (i) National interest waiver. . . . the Attorney General[1] may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest. The Petitioner has established that his work as a physician is in an area of substantial intrinsic merit and that the

[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

proposed benefits of his cardiology research would be national in scope. It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on June 6, 2014. At the time of filing, the Petitioner was working as a senior cardiology fellow at in Michigan. The Petitioner indicated that his work in the field of cardiology is in the national interest of the United States. The Director determined that the Petitioner's impact and influence on his field did not satisfy the third prong of the *NYSDOT* national interest analysis.

In addition to documentation of his published and presented work, peer review activities, research funding, professional memberships, and medical training credentials, the Petitioner submitted various reference letters discussing his work in the field. With respect to the Petitioner's research concerning modes of intervention in peripheral artery disease, director of the at , indicated that the Petitioner's two articles comparing laser-assisted balloon angioplasty with balloon angioplasty were the largest studies with the longest follow-up time thus far reported in the medical literature. further stated that the study ' Although the Petitioner's medical research has value, any research must be original and likely to present some benefit if it is to receive funding and attention from the medical or scientific community. In order for a university, publisher or grantor to accept any research for graduation, publication or funding, the research must offer new and useful information to the pool of knowledge. Not every cardiology fellow who performs original research that adds to the general pool of knowledge in the field inherently serves the national interest to an extent that is sufficient to waive the job offer requirement.

With regard to the Petitioner's published and presented work, there is no presumption that every published article or conference presentation demonstrates influence on the field as a whole; rather, the Petitioner must document the actual impact of his article or presentation. In this instance, there is no evidence showing that once disseminated through publication or presentation, the Petitioner's two articles concerning laser-assisted balloon angioplasty have garnered a significant number of independent citations or that his findings have otherwise influenced the field as a whole.

, associate professor of medicine at the and cardiology section chief at the stated that the Petitioner's research assessing "procedural and peri-procedural outcomes in patients . . . where laser atherectomy was used for revascularization in popliteal and infra-popliteal vessels was presented to the for approval of Excimer laser-assisted angioplasty in Japan." Similarly, clinical assistant professor of pediatric cardiology, indicated that the Petitioner's research reviewing laser-assisted balloon angioplasty versus balloon angioplasty alone for below knee peripheral arterial disease was "presented to the for approval of laser catheter, evidencing the significant impact that his works have had in the field."

While and both stated that the Petitioner's work was "presented" to the for approval of laser-assisted angioplasty, they did not indicate how the Petitioner's work specifically affected the agency's decision or how it has otherwise advanced the field of cardiology as a whole. In addition, the Petitioner did not submit any corroborating documentation from the agency reflecting the laser procedure's approval or explaining the "significant impact" of his work.

director of echocardiography and nuclear cardiology at noted that the Petitioner has expertise in performing "complex cardiology procedures such as Cardiac Catheterization, Echocardiography, Cardiac Stress Testing, Cardiac Magnetic Resonance Imaging, Emergency Procedures and Electrophysiology Related Procedures." In addition, stated that the Petitioner "has experience in performing the newest cardiac procedures" and that this "sets him apart from other cardiologists." A statement that a petitioner possesses useful skills or experience relates to whether similarly-trained workers are available in the United States and falls under the jurisdiction of the U.S. Department of Labor through the labor certification process. *See NYSDOT*, 22 I&N Dec. at 221.

also mentioned that the Petitioner "is a peer-reviewer for the , With regard to the Petitioner's services as a peer reviewer, it is common for a publication to ask multiple reviewers to review a manuscript and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. Thus, peer review is routine in the field, and there is no evidence demonstrating that the Petitioner's occasional participation in the widespread peer review process is an indication that he will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

an assistant professor and cardiologist at the and director of the electrophysiology section at the indicated that the Petitioner performed "breakthrough research" addressing "the current lack of medical knowledge of the normal range of QT interval in patients with ventricular pacing." In addition, stated that the Petitioner's "pioneering research found that ventricular pacing significantly prolongs QTc interval in patients with normal and wide QRS complexes but more pronounced in those with baseline narrow QRS complex." further noted that the Petitioner's work "provides very useful information for cardiologists nationwide and increases their awareness of this important EKG [electrocardiogram] change in patients with pacemaker or defibrillator implants." did not provide specific examples of how the Petitioner's work has affected treatment practices at various cardiology centers or has otherwise influenced the field as a whole.

professor of medicine at at indicated that the Petitioner has presented his work at "the Annual Conference, Annual Scientific Meeting of the Annual Meeting of the and the Annual Meeting of the With respect to the documentation reflecting that the Petitioner has presented his findings at various cardiology meetings and medical conferences, we note that many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. Professional associations, educational institutions, healthcare organizations, employers, and government agencies promote and sponsor these meetings and conferences. Although presentation of the Petitioner's work demonstrates that he shared his original findings with others, there is no documentary evidence showing, for instance, frequent independent citation of his work, or that his findings have otherwise influenced the field of cardiology at a level sufficient to waive the job offer requirement.

further stated:

> In his research study on [the Petitioner] found that Moreover, he found that . . . .

In response to the Director's request for evidence (RFE), the Petitioner provided copies of only two articles citing to the aforementioned stroke risk assessment study, and he has not established that the number of independent cites to his study is indicative of its impact on the field as a whole. A substantial number of favorable independent citations for an article is an indicator that other researchers are familiar with the work and have been influenced by it. A lack of citations, on the other hand, is generally not probative of an article's impact in the field. Furthermore, the Petitioner has not submitted any documentary evidence showing that his work has affected diagnostic or treatment protocols at various medical centers with corresponding improvement in patient outcomes, or has otherwise influenced the field as a whole.

The Petitioner's response to the RFE included additional letters of support. associate professor of medicine at mentioned the Petitioner's article entitled in 2014. stated that the Petitioner's "findings serve as important evidence to allow cardiologists to use [the] laser athrectomy [*sic*] device with more confidence to perform limb salvage procedure and to treat complex blockades of the arteries when result from balloon angioplasty is inadequate." The aforementioned 2014 article, however, was

published after the filing date of the Form I-140 on June 6, 2014. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, we cannot consider the Petitioner's findings in that were not yet published as of the filing date and, thus, had not been disseminated in the field, to establish his eligibility at the time of filing.

an interventional cardiologist at indicated that the Petitioner's studies in 2014) and 2014) "provide strong evidence to support the use of laser in terms of improved efficacy and safety in both immediate and long term outcome" and stated that the two "articles will likely have significant impact in our field of practice." expectation regarding the possible future impact of the Petitioner's work, however, is not evidence of his eligibility at the time of filing.

clinical assistant professor in the Section of Cardiovascular Diseases, stated that the Petitioner's laser in infra-popliteal and popliteal stenosis 2 (LIPS 2) study presented at the provided "3-year follow up data that showed favorable results." In addition, attested that the aforementioned "findings have made a tremendous impact on the field" and expressed his confidence in expanding "the use of laser atherectomy to non-critical limb ischemia patients." We note that the was held in 2014. Again, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, we cannot consider any presentations given after June 6, 2014, the date the petition was filed, as evidence to establish the Petitioner's eligibility at the time of filing.

, a physician specializing in internal medicine and pulmonary and critical care at mentioned the Petitioner's article entitled Data from registry." With respect to his clinical practice, attested that the Petitioner's findings "have provided a significant impact." further explained: "It gives me confidence that I am applying [the] best treatment strategy that works for our patient population and prescribing anticoagulation drug to truly high-risk patients, and sparing bleeding side effect to low-risk counterparts who do not need one." While indicated that Petitioner's study increased his confidence applying the and providing anticoagulation drug treatment in patients with atrial fibrillation, he did not provide specific examples of how the Petitioner's findings have altered assessment and treatment procedures in the medical field or have otherwise had an impact on the field of cardiology as a whole.

vice-chair of the stated that the Petitioner "found that and anticoagulation strategy in patients with AF [atrial fibrillation] with low score." In addition, indicated that following the Petitioner's pioneering work, "the Guideline for the management of patients with atrial fibrillation suggested using

The Petitioner, however, did not submit any corroborating documentation from the aforementioned organizations reflecting the new patient management guideline or indicating that the revised guidance was primarily attributable to his work. USCIS need not rely on unsubstantiated statements. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). There is no evidence demonstrating that the Petitioner's findings have affected the field as a whole.

The Petitioner submitted letters of varying probative value. We have addressed the specific assertions above. Generalized conclusory assertions that do not identify specific contributions or their impact in the field have little probative value. *Id.* In addition, uncorroborated statements are insufficient. *See Visinscaia v. Beers*, 4 F.Supp.3d 126, 134-35 (D.D.C. 2013) (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field); *See also Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *Id. See also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). As the submitted reference letters did not establish that the Petitioner's work has influenced the field as a whole, they do not demonstrate his eligibility for the national interest waiver.

On appeal, the Petitioner lists his various research accomplishments, but as indicated above, there is no documentary evidence showing that his work has affected the field of cardiology as a whole. In addition, the Petitioner mentions his "leading and critical roles as a Senior Cardiology Fellow" at providing primary care, critical care, and emergency care to patients suffering from cardiovascular diseases. Along with his work experience at the Petitioner describes his expertise in performing complex medical procedures in his specialty such as peripheral catheterization, coronary angiography, and cardiac catheterization. We note, however, that any objective qualifications which are necessary for the performance of the occupation can be articulated in an application for labor certification. *See NYSDOT*, 22 I&N Dec. at 220-21. Furthermore, the Petitioner states that he has taught cardiac procedures to junior and senior physicians, medical students, and cardiologists at The instruction and training provided by the Petitioner, while important to the medical trainees at do not have the required national scope to merit a waiver of the job offer requirement. *See Id.* at 217, n.3.

The Petitioner also mentions the adverse effects of coronary heart disease in the United States, and thus our nation's need for qualified cardiologists. General statements regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual benefits the national interest by virtue of engaging in the field. *Id.* at 217. Such information addresses only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test.

We do not dispute the importance of having skilled cardiologists working in our nation's healthcare institutions. At issue in this matter, however, is whether the Petitioner's individual contributions in the field are of such significance that he merits the special benefit of a national interest waiver. Lastly, the Petitioner contends that his unique skills, medical knowledge, and cardiology expertise are not amenable to the labor certification process. The inapplicability or unavailability of a labor certification, however, cannot be viewed as sufficient cause for a national interest waiver; a petitioner still must demonstrate that he will serve the national interest to a substantially greater degree than do others in his field. *Id.* at 218, n.5.

III. CONCLUSION

Considering the letters and other evidence in the aggregate, the record does not establish that the Petitioner's work has influenced the field as a whole or that he will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. The Petitioner has not shown that his past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification he seeks.

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. Although a petitioner need not demonstrate notoriety on the scale of national acclaim, he must have "a past history of demonstrable achievement with some degree of influence on the field as a whole." *Id.* at 219, n.6. On the basis of the evidence submitted, the Petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of C-P-*, ID# 16273 (AAO Apr. 18, 2016)